

IS STINGRAY UNIQUE OR DOES ALL NATIONAL SECURITY INFORMATION SHARING INVOLVE SUCH SILENCING?

In the last few days, there have been two developments on Stingray transparency. First, the Erie County Sheriff's office complied with a NYCLU FOIA for Stingray documents. So they released documents showing somewhat modest (though still troubling, often unsupported by any legal process) use of their Stingray. Meanwhile, in Maryland, a policy detective testified about some – but not all – details of Baltimore Police Department's far more extensive use of its unit. (See also AP's coverage of the hearing.)

Detective Emmanuel Cabreja, a member of the Police Department's Advanced Technical Team, testified that police own a Hailstorm cell site simulator – the latest version of the stingray – and have used the technology 4,300 times since 2007.

Cabreja said he had used it 600 to 800 times in less than two years as a member of the unit.

[snip]

Cabreja testified Wednesday during a pretrial hearing in the case of Nicholas West, 21, and Myquan Anderson, 17. West and Anderson were charged in October 2013 with armed carjacking, armed robbery, theft and other violations stemming from an attack on a man in Federal Hill.

Cabreja took what he said was a copy of the nondisclosure agreement to court. It

was dated July 2011 and bore the signatures of then-Police Commissioner Frederick H. Bealefeld III and then-State's Attorney Gregg Bernstein.

Defense attorney Joshua Insley asked Cabreja about the agreement.

"Does this document instruct you to withhold evidence from the state's attorney and Circuit Court, even upon court order to produce?" he asked.

"Yes," Cabreja said.

Cabreja did not comply with a defense subpoena to produce the device in court. He said he was barred from doing so by the nondisclosure agreement.

In both cases, we finally got a copy of the Non-Disclosure Agreement FBI has been forcing localities to sign on Stingray users. Here's the Erie one (and here's MuckRock's analysis of the slow process of liberating these); the non-disclosures appear to be identical, except for the names of the jurisdiction and signers.

Tech people tracking this development are still mystified by the extreme secrecy that has held sway up until now. People have known about Stingrays for years, so why is the FBI working so hard to hide it and why are localities willing to lose convictions to fulfill the NDAs they've signed? (See this Chris Soghoian and Stephanie Pell paper on that take.)

As I have said, I think the FBI may be hiding more than just localities' own use of Stingrays. It may be hiding its own use of Stingrays that may go well beyond what localities do with them (this MN version was the previously most informative version of the NDA for comparison). Indeed, the newly disclosed language in the NDA on deconfliction reveals that users "will coordinate with the FBI in advance of its use of the wireless collection equipment/technology to ensure de-confliction of respective missions."

Now, in addition to the NDA, Erie also released a list of its use of its Stingray. Of the 47 uses described, it partnered with the FBI 4 times – though all but one of those included Marshal Service involvement in finding a fugitive, with the remaining one involving drugs. So that says FBI will borrow localities' Stingrays, though nowhere near as often as USMS (which asked for Erie's help 17 times). The remainder of the requests all helped local law enforcement, ranging from NY State Police, Park police, Buffalo PD, smaller cities, and even colleges. That is, effectively Erie served as the (or a) local service for other law enforcement agencies.

But there was nothing national security related in any of that usage. And while Buffalo is not the terrorist hotspot Dick Cheney made it out to be when he tried to suspect posse comitatus to start policing Lackawanna, there is a Muslim community that FBI is known to have tracked closely.

So while it's unclear whether FBI's requirements on deconfliction refer to its own potential need for a local Stingray or whether they have their own Stingrays they don't want conflicting with Erie's, FBI does seem to have envisioned the possibility of one agency's Stingray use stepping on another agency's.

Note, too, another thing FBI has been hiding – mention of manuals and equipment – may serve to hide the specifications of the equipment held locally, which is tied closely to capabilities (which I think might actually be an acceptable thing to keep secret, as different versions of different Stingrays have different functionalities).

But I'd like to entertain another possibility: that the NDAs we're seeing show the outlines underlying *much* of the vastly expanded information and technology sharing that has happened since 9/11.

Consider: FBI is the fulcrum of all the

post-9/11 information sharing from the federal government on down to localities (the same kind of quiltwork of localities as rely on the Erie Stingray). And a great deal of that intelligence will be sensitive – perhaps even more so than the Stingrays themselves. And, similarly, when that data derives from FISA or some other intelligence process, FBI is going to be just as adamant that the localities hide the provenance of it, using all the same parallel construction techniques as demanded by the NDA.

The Memoranda of Understanding for Joint Terrorism Task Forces (Massachusetts State Police; Houston Police Department) – through which a lot of that info-sharing happens – include similar features that are in some ways more restrictive, and in some ways less so. Records are possessed by FBI, ensuring they can't be shared. JTTF gets investigative exclusivity, so it can conduct its own parallel construction if it deems necessary. Members of JTTFs get security clearances, which would impose even stronger obligations to secrecy as the Stingray NDAs, but members are also required not to disclose sensitive information to others. That is, there, the information sharing happens within a structure that ensures (or at least puts the FBI in charge of) much of the same secrecy that would exist on Stingrays, albeit tied to the institution and stricter NDAs of clearances.

FBI's Section 702 minimization procedures permits the dissemination of FISA-derived information that is evidence of a crime or related to child exploitation, including kiddie porn, to local authorities. It can also disseminate intelligence on potential attacks or sabotage. But it doesn't precisely explain how that dissemination would occur, beyond that it would comply with similar dissemination within the Federal government.

I may be missing it, but there must be a great deal of information sharing protocols that have similarities to the Stingray NDAs: that give

people without clearance that need "sources and methods" information to do their jobs access, but in such a way that FBI retains all the control over the information.

That is, is it possible that it's not just the Stingray over which the FBI supersedes justice and democratic transparency to its own prerogatives?